

108TH CONGRESS
1ST SESSION

H. R. 1000

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide additional protections to participants and beneficiaries in individual account plans from excessive investment in employer securities and to promote the provision of retirement investment advice to workers managing their retirement income assets.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2003

Mr. BOEHNER (for himself, Mr. SAM JOHNSON of Texas, Mr. GREENWOOD, Mr. GIBBONS, Mr. KELLER, Mr. WILSON of South Carolina, Mr. NORWOOD, Mr. PLATTS, Mr. TIBERI, Mr. SHAYS, Mr. SIMMONS, Mr. McKEON, Mrs. BIGGERT, Mr. FRELINGHUYSEN, Mr. ISAKSON, Ms. GINNY BROWN-WAITE of Florida, Mr. LATOURETTE, Ms. NORTON, Mr. SOUDER, Mr. SENSENBRENNER, Mr. ENGLISH, Mr. GREEN of Wisconsin, Mr. HERGER, Mr. WELDON of Pennsylvania, Mr. BEAUPREZ, Mr. FEENEY, Mr. NEY, Mr. BALLENGER, Mr. SWEENEY, Mr. BRADY of Texas, Mr. BURR, Mrs. MUSGRAVE, Mr. DEMINT, Mr. CRANE, Ms. HART, Mr. OXLEY, Mr. UPTON, Mrs. BLACKBURN, Mr. KLINE, Mr. COLE, Mr. CASTLE, Mr. PETERSON of Pennsylvania, Mr. TANCREDO, Mr. ROGERS of Michigan, Mr. KOLBE, Mr. JANKLOW, Mr. REYNOLDS, Mr. REHBERG, Mr. HILL, Mr. FOSSELLA, Mr. BOOZMAN, Mr. CULBERSON, and Mr. WALSH) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide additional protections to participants

and beneficiaries in individual account plans from excessive investment in employer securities and to promote the provision of retirement investment advice to workers managing their retirement income assets.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Pension Security Act of 2003”.

6 (b) TABLE OF CONTENTS.—The table of contents is
 7 as follows:

Sec. 1. Short title and table of contents.

TITLE I—IMPROVEMENTS IN PENSION SECURITY

Sec. 101. Periodic pension benefits statements.

Sec. 102. Inapplicability of relief from fiduciary liability during blackout periods.

Sec. 103. Informational and educational support for pension plan fiduciaries.

Sec. 104. Diversification requirements for defined contribution plans that hold employer securities.

Sec. 105. Prohibited transaction exemption for the provision of investment advice.

Sec. 106. Study regarding impact on retirement savings of participants and beneficiaries by requiring consultants to advise plan fiduciaries of individual account plans.

Sec. 107. Treatment of qualified retirement planning services.

Sec. 108. Effective dates and related rules.

TITLE II—OTHER PROVISIONS RELATING TO PENSIONS

Sec. 201. Amendments to Retirement Protection Act of 1994.

Sec. 202. Reporting simplification.

Sec. 203. Improvement of employee plans compliance resolution system.

Sec. 204. Flexibility in nondiscrimination, coverage, and line of business rules.

Sec. 205. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.

Sec. 206. Notice and consent period regarding distributions.

Sec. 207. Annual report dissemination.

Sec. 208. Technical corrections to Saver Act.

Sec. 209. Missing participants.

Sec. 210. Reduced PBGC premium for new plans of small employers.

Sec. 211. Reduction of additional PBGC premium for new and small plans.

- Sec. 212. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 213. Substantial owner benefits in terminated plans.
- Sec. 214. Benefit suspension notice.
- Sec. 215. Studies.
- Sec. 216. Interest rate range for additional funding requirements.

TITLE III—GENERAL PROVISIONS

- Sec. 301. Provisions relating to plan amendments.

1 **TITLE I—IMPROVEMENTS IN** 2 **PENSION SECURITY**

3 **SEC. 101. PERIODIC PENSION BENEFITS STATEMENTS.**

4 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
5 INCOME SECURITY ACT OF 1974.—

6 (1) REQUIREMENTS.—

7 (A) IN GENERAL.—Section 105(a) of the
8 Employee Retirement Income Security Act of
9 1974 (29 U.S.C. 1025(a)) is amended to read
10 as follows:

11 “(a)(1)(A) The administrator of an individual ac-
12 count plan shall furnish a pension benefit statement—

13 “(i) to each plan participant at least annually,

14 “(ii) to each plan beneficiary upon written re-
15 quest, and

16 “(iii) in the case of an applicable individual ac-
17 count plan, to each individual who is a plan partici-
18 pant or beneficiary and who has a right to direct in-
19 vestments, at least quarterly.

20 “(B) The administrator of a defined benefit plan
21 shall furnish a pension benefit statement—

1 “(i) at least once every 3 years to each partici-
2 pant with a nonforfeitable accrued benefit who is
3 employed by the employer maintaining the plan at
4 the time the statement is furnished to participants,
5 and

6 “(ii) to a plan participant or plan beneficiary of
7 the plan upon written request.

8 “(2) A pension benefit statement under paragraph
9 (1)—

10 “(A) shall indicate, on the basis of the latest
11 available information—

12 “(i) the total benefits accrued, and

13 “(ii) the nonforfeitable pension benefits, if
14 any, which have accrued, or the earliest date on
15 which benefits will become nonforfeitable,

16 “(B) shall be written in a manner calculated to
17 be understood by the average plan participant, and

18 “(C) may be provided in written form or in
19 electronic or other appropriate form to the extent
20 that such form is reasonably accessible to the recipi-
21 ent.

22 “(3)(A) In the case of a defined benefit plan, the re-
23 quirements of paragraph (1)(B)(i) shall be treated as met
24 with respect to a participant if the administrator, at least
25 once each year, provides the participant with notice, at

1 the participant's last known address, of the availability of
2 the pension benefit statement and the ways in which the
3 participant may obtain such statement. Such notice shall
4 be provided in written, electronic, or other appropriate
5 form, and may be included with other communications to
6 the participant if done in a manner reasonably designed
7 to attract the attention of the participant.

8 “(B) The Secretary may provide that years in which
9 no employee or former employee benefits (within the
10 meaning of section 410(b) of the Internal Revenue Code
11 of 1986) under the plan need not be taken into account
12 in determining the 3-year period under paragraph
13 (1)(B)(i).”.

14 (B) CONFORMING AMENDMENTS.—

15 (i) Section 105 of the Employee Re-
16 tirement Income Security Act of 1974 (29
17 U.S.C. 1025) is amended by striking sub-
18 section (d).

19 (ii) Section 105(b) of such Act (29
20 U.S.C. 1025(b)) is amended to read as fol-
21 lows:

22 “(b) In no case shall a participant or beneficiary of
23 a plan be entitled to more than one statement described
24 in clause (i) or (ii) of subsection (a)(1)(A) or clause (i)
25 or (ii) of subsection (a)(1)(B), whichever is applicable, in

1 any 12-month period. If such report is required under sub-
2 section (a) to be furnished at least quarterly, the require-
3 ments of the preceding sentence shall be applied with re-
4 spect to each quarter in lieu of the 12-month period.”.

5 (2) INFORMATION REQUIRED FROM APPLICA-
6 BLE INDIVIDUAL ACCOUNT PLANS.—Section 105 of
7 such Act (as amended by paragraph (1)) is amended
8 further by adding at the end the following new sub-
9 section:

10 “(d)(1) The statements required to be provided at
11 least quarterly under subsection (a)(1)(A)(iii) in the case
12 of applicable individual account plans shall include (to-
13 gether with the information required in subsection (a)) the
14 following:

15 “(A) the value of each investment to which as-
16 sets in the individual account have been allocated,
17 determined as of the most recent valuation date
18 under the plan, including the value of any assets
19 held in the form of employer securities, without re-
20 gard to whether such securities were contributed by
21 the plan sponsor or acquired at the direction of the
22 plan or of the participant or beneficiary,

23 “(B) an explanation, written in a manner cal-
24 culated to be understood by the average plan partici-
25 pant, of any limitations or restrictions on the right

1 of the participant or beneficiary to direct an invest-
2 ment, and

3 “(C) an explanation, written in a manner cal-
4 culated to be understood by the average plan partici-
5 pant, of the importance, for the long-term retire-
6 ment security of participants and beneficiaries, of a
7 well-balanced and diversified investment portfolio,
8 including a discussion of the risk of holding more
9 than 25 percent of a portfolio in the security of any
10 one entity, such as employer securities.

11 “(2) The Secretary shall issue guidance and model
12 notices which meet the requirements of this subsection.”.

13 (3) DEFINITION OF APPLICABLE INDIVIDUAL
14 ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C.
15 1002) is amended by adding at the end the following
16 new paragraph:

17 “(42)(A) The term ‘applicable individual account
18 plan’ means any individual account plan, except that such
19 term does not include an employee stock ownership plan
20 (within the meaning of section 4975(e)(7) of the Internal
21 Revenue Code of 1986) unless there are any contributions
22 to such plan (or earnings thereunder) held within such
23 plan that are subject to subsection (k)(3) or (m)(2) of sec-
24 tion 401 of the Internal Revenue Code of 1986. Such term
25 shall not include a one-participant retirement plan.

1 “(B) The term ‘one-participant retirement plan’
2 means a pension plan with respect to which the following
3 requirements are met:

4 “(i) on the first day of the plan year—

5 “(I) the plan covered only one individual
6 (or the individual and the individual’s spouse)
7 and the individual owned 100 percent of the
8 plan sponsor (whether or not incorporated), or

9 “(II) the plan covered only one or more
10 partners (or partners and their spouses) in the
11 plan sponsor;

12 “(ii) the plan meets the minimum coverage re-
13 quirements of 410(b) of the Internal Revenue Code
14 of 1986 (as in effect on the date of the enactment
15 of this paragraph) without being combined with any
16 other plan of the business that covers the employees
17 of the business;

18 “(iii) the plan does not provide benefits to any-
19 one except the individual (and the individual’s
20 spouse) or the partners (and their spouses);

21 “(iv) the plan does not cover a business that is
22 a member of an affiliated service group, a controlled
23 group of corporations, or a group of businesses
24 under common control; and

1 “(v) the plan does not cover a business that
2 leases employees.”.

3 (4) CIVIL PENALTIES FOR FAILURE TO PRO-
4 VIDE QUARTERLY BENEFIT STATEMENTS.—Section
5 502 of such Act (29 U.S.C. 1132) is amended—

6 (A) in subsection (a)(6), by striking “(6),
7 or (7)” and inserting “(6), (7), or (8)”;

8 (B) by redesignating paragraph (8) of sub-
9 section (c) as paragraph (9); and

10 (C) by inserting after paragraph (7) of
11 subsection (c) the following new paragraph:

12 “(8) The Secretary may assess a civil penalty against
13 any plan administrator of up to \$1,000 a day from the
14 date of such plan administrator’s failure or refusal to pro-
15 vide participants or beneficiaries with a benefit statement
16 on at least a quarterly basis in accordance with section
17 105(a)(1)(A)(iii).”.

18 (5) MODEL STATEMENTS.—The Secretary of
19 Labor shall, not later than 180 days after the date
20 of the enactment of this Act, issue initial guidance
21 and a model benefit statement, written in a manner
22 calculated to be understood by the average plan par-
23 ticipant, that may be used by plan administrators in
24 complying with the requirements of section 105 of
25 the Employee Retirement Income Security Act of

1 1974. Not later than 75 days after the date of the
 2 enactment of this Act, the Secretary shall promul-
 3 gate interim final rules necessary to carry out the
 4 amendments made by this subsection.

5 (b) AMENDMENTS TO THE INTERNAL REVENUE
 6 CODE OF 1986.—

7 (1) PROVISION OF INVESTMENT EDUCATION
 8 NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—
 9 Section 414 of the Internal Revenue Code of 1986
 10 (relating to definitions and special rules) is amended
 11 by adding at the end the following:

12 “(w) PROVISION OF INVESTMENT EDUCATION NO-
 13 TICES TO PARTICIPANTS IN CERTAIN PLANS.—

14 “(1) IN GENERAL.—The plan administrator of
 15 an applicable pension plan shall provide to each ap-
 16 plicable individual an investment education notice
 17 described in paragraph (2) at the time of the enroll-
 18 ment of the applicable individual in the plan and not
 19 less often than annually thereafter.

20 “(2) INVESTMENT EDUCATION NOTICE.—An in-
 21 vestment education notice is described in this para-
 22 graph if such notice contains—

23 “(A) an explanation, for the long-term re-
 24 tirement security of participants and bene-
 25 ficiaries, of generally accepted investment prin-

1 principles, including principles of risk management
2 and diversification, and

3 “(B) a discussion of the risk of holding
4 substantial portions of a portfolio in the secu-
5 rity of any one entity, such as employer securi-
6 ties.

7 “(3) UNDERSTANDABILITY.—Each notice re-
8 quired by paragraph (1) shall be written in a man-
9 ner calculated to be understood by the average plan
10 participant and shall provide sufficient information
11 (as determined in accordance with guidance provided
12 by the Secretary) to allow recipients to understand
13 such notice.

14 “(4) FORM AND MANNER OF NOTICES.—The
15 notices required by this subsection shall be in writ-
16 ing, except that such notices may be in electronic or
17 other form (or electronically posted on the plan’s
18 website) to the extent that such form is reasonably
19 accessible to the applicable individual.

20 “(5) DEFINITIONS.—For purposes of this sub-
21 section—

22 “(A) APPLICABLE INDIVIDUAL.—The term
23 ‘applicable individual’ means—

24 “(i) any participant in the applicable
25 pension plan,

1 “(ii) any beneficiary who is an alter-
2 nate payee (within the meaning of section
3 414(p)(8)) under a qualified domestic rela-
4 tions order (within the meaning of section
5 414(p)(1)(A)), and

6 “(iii) any beneficiary of a deceased
7 participant or alternate payee.

8 “(B) APPLICABLE PENSION PLAN.—The
9 term ‘applicable pension plan’ means—

10 “(i) a plan described in clause (i), (ii),
11 or (iv) of section 219(g)(5)(A), and

12 “(ii) an eligible deferred compensation
13 plan (as defined in section 457(b)) of an
14 eligible employer described in section
15 457(e)(1)(A),

16 which permits any participant to direct the in-
17 vestment of some or all of his account in the
18 plan or under which the accrued benefit of any
19 participant depends in whole or in part on hy-
20 pothetical investments directed by the partici-
21 pant. Such term shall not include a one-partici-
22 pant retirement plan or a plan to which section
23 105 of the Employee Retirement Income Secu-
24 rity Act of 1974 applies.

1 “(C) ONE-PARTICIPANT RETIREMENT
2 PLAN DEFINED.—The term ‘one-participant re-
3 tirement plan’ means a retirement plan with re-
4 spect to which the following requirements are
5 met:

6 “(i) on the first day of the plan
7 year—

8 “(I) the plan covered only one in-
9 dividual (or the individual and the in-
10 dividual’s spouse) and the individual
11 owned 100 percent of the plan spon-
12 sor (whether or not incorporated), or

13 “(II) the plan covered only one
14 or more partners (or partners and
15 their spouses) in the plan sponsor;

16 “(ii) the plan meets the minimum cov-
17 erage requirements of 410(b) without
18 being combined with any other plan of the
19 business that covers the employees of the
20 business;

21 “(iii) the plan does not provide bene-
22 fits to anyone except the individual (and
23 the individual’s spouse) or the partners
24 (and their spouses);

1 “(iv) the plan does not cover a busi-
 2 ness that is a member of an affiliated serv-
 3 ice group, a controlled group of corpora-
 4 tions, or a group of businesses under com-
 5 mon control; and

6 “(v) the plan does not cover a busi-
 7 ness that leases employees.

8 “(6) CROSS REFERENCE.—

**“For provisions relating to penalty for failure to
 provide the notice required by this section, see sec-
 tion 6652(m).”.**

9 (2) PENALTY FOR FAILURE TO PROVIDE NO-
 10 TICE.—Section 6652 of such Code (relating to fail-
 11 ure to file certain information returns, registration
 12 statements, etc.) is amended by redesignating sub-
 13 section (m) as subsection (n) and by inserting after
 14 subsection (l) the following new subsection:

15 “(m) FAILURE TO PROVIDE INVESTMENT EDU-
 16 CATION NOTICES TO PARTICIPANTS IN CERTAIN
 17 PLANS.—In the case of each failure to provide a written
 18 explanation as required by section 414(w) with respect to
 19 an applicable individual (as defined in such section), at
 20 the time prescribed therefor, unless it is shown that such
 21 failure is due to reasonable cause and not to willful ne-
 22 glect, there shall be paid, on notice and demand of the
 23 Secretary and in the same manner as tax, by the person
 24 failing to provide such notice, an amount equal to \$100

1 for each such failure, but the total amount imposed on
2 such person for all such failures during any calendar year
3 shall not exceed \$50,000.”.

4 **SEC. 102. INAPPLICABILITY OF RELIEF FROM FIDUCIARY**
5 **LIABILITY DURING BLACKOUT PERIODS.**

6 (a) IN GENERAL.—Section 404(c) of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1104(c)) is amended by adding at the end the following
9 new paragraph:

10 “(4)(A) Paragraph (1)(B) shall not apply in connec-
11 tion with the direction or diversification of assets credited
12 to the account of any participant or beneficiary during a
13 blackout period if, by reason of the imposition of such
14 blackout period, the ability of such participant or bene-
15 ficiary to direct or diversify such assets is suspended, lim-
16 ited, or restricted.

17 “(B) If a fiduciary authorizing a blackout period
18 meets the requirements of this title in connection with au-
19 thorizing such blackout period, such fiduciary shall not be
20 liable under this title for any loss occurring during the
21 blackout period as a result of any exercise by the partici-
22 pant or beneficiary of control over assets in his or her ac-
23 count prior to the blackout period. Matters to be consid-
24 ered in determining whether such fiduciary has met the
25 requirements of this title include whether such fiduciary—

1 “(i) has considered the reasonableness of the
2 expected length of the blackout period,

3 “(ii) has provided the notice required under sec-
4 tion 101(i)(2), and

5 “(iii) has acted in accordance with the require-
6 ments of subsection (a) in determining whether to
7 enter into the blackout period.

8 “(C) If a blackout period arises in connection with
9 a change in the investment options offered under the plan,
10 a participant or beneficiary shall be deemed to have exer-
11 cised control over the assets in his or her account prior
12 to the blackout period, if, after reasonable notice of the
13 change in investment options is given to such participant
14 or beneficiary before such blackout period, assets in the
15 account of the participant or beneficiary are transferred—

16 “(i) to plan investment options in accordance
17 with the affirmative election of the participant or
18 beneficiary, or

19 “(ii) in any case in which there is no such elec-
20 tion, in the manner set forth in such notice.

21 “(D) Any imposition of any limitation or restriction
22 that may govern the frequency of transfers between invest-
23 ment vehicles shall not be treated as the imposition of a
24 blackout period to the extent such limitation or restriction
25 is disclosed to participants or beneficiaries through the

1 summary plan description or materials describing specific
2 investment alternatives under the plan.

3 “(E) For purposes of this paragraph, the term ‘black-
4 out period’ has the meaning given such term by section
5 101(i)(7).”.

6 (b) GUIDANCE.—The Secretary of Labor shall, on or
7 before December 31, 2004, issue interim final regulations
8 providing guidance on how plan sponsors or any other af-
9 fected fiduciaries can satisfy their fiduciary responsibilities
10 during any blackout period during which the ability of a
11 participant or beneficiary to direct the investment of as-
12 sets in his or her individual account is suspended.

13 **SEC. 103. INFORMATIONAL AND EDUCATIONAL SUPPORT**
14 **FOR PENSION PLAN FIDUCIARIES.**

15 Section 404 of the Employee Retirement Income Se-
16 curity Act of 1974 (29 U.S.C. 1104) is amended by adding
17 at the end the following new subsection:

18 “(e) The Secretary shall establish a program under
19 which information and educational resources shall be
20 made available on an ongoing basis to persons serving as
21 fiduciaries under employee pension benefit plans so as to
22 assist such persons in diligently and effectively carrying
23 out their fiduciary duties in accordance with this part.
24 Such program shall provide information concerning the
25 practices that define prudent investment procedures for

1 plan fiduciaries. Information provided under the program
 2 shall address the relevant investment considerations for
 3 defined benefit and defined contribution plans, including
 4 investment in employer securities by such plans. In devel-
 5 oping such program, the Secretary shall solicit information
 6 from the public, including investment education profes-
 7 sionals.”.

8 **SEC. 104. DIVERSIFICATION REQUIREMENTS FOR DEFINED**
 9 **CONTRIBUTION PLANS THAT HOLD EM-**
 10 **PLOYER SECURITIES.**

11 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT
 12 INCOME SECURITY ACT OF 1974.—Section 204 of the
 13 Employee Retirement Income Security Act of 1974 (29
 14 U.S.C. 1054) is amended—

15 (1) by redesignating subsection (j) as sub-
 16 section (k); and

17 (2) by inserting after subsection (i) the fol-
 18 lowing new subsection:

19 “(j) DIVERSIFICATION REQUIREMENTS FOR INDIV-
 20 IDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECUR-
 21 ITIES.—

22 “(1) IN GENERAL.—An applicable individual ac-
 23 count plan shall meet the requirements of para-
 24 graphs (2) and (3).

1 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-
2 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-
3 TIES.—In the case of the portion of the account at-
4 tributable to employee contributions and elective de-
5 ferrals which is invested in employer securities, a
6 plan meets the requirements of this paragraph if
7 each applicable individual may elect to direct the
8 plan to divest any such securities in the individual’s
9 account and to reinvest an equivalent amount in
10 other investment options which meet the require-
11 ments of paragraph (4).

12 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN
13 EMPLOYER SECURITIES.—

14 “(A) IN GENERAL.—In the case of the por-
15 tion of the account attributable to employer
16 contributions (other than elective deferrals to
17 which paragraph (2) applies) which is invested
18 in employer securities, a plan meets the require-
19 ments of this paragraph if, under the plan—

20 “(i) each applicable individual with a
21 benefit based on 3 years of service may
22 elect to direct the plan to divest any such
23 securities in the individual’s account and
24 to reinvest an equivalent amount in other

1 investment options which meet the require-
2 ments of paragraph (4), or

3 “(ii) with respect to any employer se-
4 curity allocated to an applicable individ-
5 ual’s account during any plan year, such
6 applicable individual may elect to direct
7 the plan to divest such employer security
8 after a date which is not later than 3 years
9 after the end of such plan year and to re-
10 invest an equivalent amount in other in-
11 vestment options which meet the require-
12 ments of paragraph (4).

13 “(B) APPLICABLE INDIVIDUAL WITH BEN-
14 EFIT BASED ON 3 YEARS OF SERVICE.—For
15 purposes of subparagraph (A), an applicable in-
16 dividual has a benefit based on 3 years of serv-
17 ice if such individual would be an applicable in-
18 dividual if only participants in the plan who
19 have completed at least 3 years of service (as
20 determined under section 203(b)) were referred
21 to in paragraph (5)(B)(i).

22 “(4) INVESTMENT OPTIONS.—The requirements
23 of this paragraph are met if—

24 “(A) the plan offers not less than 3 invest-
25 ment options, other than employer securities, to

1 which an applicable individual may direct the
2 proceeds from the divestment of employer secu-
3 rities pursuant to this subsection, each of which
4 is diversified and has materially different risk
5 and return characteristics, and

6 “(B) the plan permits the applicable indi-
7 vidual to choose from any of the investment op-
8 tions made available under the plan to which
9 such proceeds may be so directed, subject to
10 such restrictions as may be provided by the
11 plan limiting such choice to periodic, reasonable
12 opportunities occurring no less frequently than
13 on a quarterly basis.

14 “(5) DEFINITIONS AND RULES.—For purposes
15 of this subsection—

16 “(A) APPLICABLE INDIVIDUAL ACCOUNT
17 PLAN.—The term ‘applicable individual account
18 plan’ means any individual account plan, except
19 that such term does not include an employee
20 stock ownership plan (within the meaning of
21 section 4975(e)(7) of the Internal Revenue
22 Code of 1986) unless there are any contribu-
23 tions to such plan (or earnings thereon) held
24 within such plan that are subject to subsection

1 (k)(3) or (m)(2) of section 401 of the Internal
2 Revenue Code of 1986.

3 “(B) APPLICABLE INDIVIDUAL.—The term
4 ‘applicable individual’ means—

5 “(i) any participant in the plan, and

6 “(ii) any beneficiary of a participant
7 referred to in clause (i) who has an ac-
8 count under the plan with respect to which
9 the beneficiary is entitled to exercise the
10 rights of the participant.

11 “(C) ELECTIVE DEFERRAL.—The term
12 ‘elective deferral’ means an employer contribu-
13 tion described in section 402(g)(3)(A) of the In-
14 ternal Revenue Code of 1986 (as in effect on
15 the date of the enactment of this subsection).

16 “(D) EMPLOYER SECURITY.—The term
17 ‘employer security’ shall have the meaning
18 given such term by section 407(d)(1) of this
19 Act (as in effect on the date of the enactment
20 of this subsection).

21 “(E) EMPLOYEE STOCK OWNERSHIP
22 PLAN.—The term ‘employee stock ownership
23 plan’ shall have the same meaning given to
24 such term by section 4975(e)(7) of the Internal

1 Revenue Code of 1986 (as in effect on the date
2 of the enactment of this subsection).

3 “(F) ELECTIONS.—Elections under this
4 subsection may be made not less frequently
5 than quarterly.

6 “(6) EXCEPTION WHERE THERE IS NO READILY
7 TRADABLE STOCK.—This subsection shall not apply
8 if there is no class of stock issued by the employer
9 (or by a corporation which is an affiliate of the em-
10 ployer (as defined in section 407(d)(7))) that is
11 readily tradable on an established securities market
12 (or in such other circumstances as may be deter-
13 mined jointly by the Secretary of Labor and the Sec-
14 retary of the Treasury in regulations).

15 “(7) TRANSITION RULE.—

16 “(A) IN GENERAL.—In the case of any in-
17 dividual account plan which, on the first day of
18 the first plan year to which this subsection ap-
19 plies, holds employer securities of any class that
20 were acquired before such date and on which
21 there is a restriction on diversification otherwise
22 precluded by this subsection, this subsection
23 shall apply to such securities of such class held
24 in any plan year only with respect to the num-
25 ber of such securities equal to the applicable

1 percentage of the total number of such securi-
 2 ties of such class held on such date.

3 “(B) APPLICABLE PERCENTAGE.—For
 4 purposes of subparagraph (A), the applicable
 5 percentage shall be as follows:

“Plan years for which provisions are effective:	Applicable percentage:
1st plan year	20 percent
2nd plan year	40 percent
3rd plan year	60 percent
4th plan year	80 percent
5th plan year or thereafter	100 percent.

6 “(C) ELECTIVE DEFERRALS TREATED AS
 7 SEPARATE PLAN NOT INDIVIDUAL ACCOUNT
 8 PLAN.—For purposes of subparagraph (A), the
 9 applicable percentage shall be 100 percent with
 10 respect to—

11 “(i) employee contributions to a plan
 12 under which any portion attributable to
 13 elective deferrals is treated as a separate
 14 plan under section 407(b)(2) as of the date
 15 of the enactment of this paragraph, and

16 “(ii) such elective deferrals.

17 “(D) COORDINATION WITH PRIOR ELEC-
 18 TIONS.—In any case in which a divestiture of
 19 investment in employer securities of any class
 20 held by an employee stock ownership plan prior

to the effective date of this subsection was undertaken pursuant to other applicable Federal law prior to such date, the applicable percentage (as determined without regard to this subparagraph) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

“(8) REGULATIONS.—The Secretary of the Treasury shall prescribe regulations under this subsection in consultation with the Secretary of Labor.”.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Section 401(a) of the Internal Revenue Code of 1986 (relating to requirements for qualification) is amended by inserting after paragraph (34) the following new paragraph:

“(35) DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.—

“(A) IN GENERAL.—An applicable defined contribution plan shall meet the requirements of subparagraphs (B) and (C).

1 “(B) EMPLOYEE CONTRIBUTIONS AND
2 ELECTIVE DEFERRALS INVESTED IN EMPLOYER
3 SECURITIES.—In the case of the portion of the
4 account attributable to employee contributions
5 and elective deferrals which is invested in em-
6 ployer securities, a plan meets the requirements
7 of this subparagraph if each applicable indi-
8 vidual in such plan may elect to direct the plan
9 to divest any such securities in the individual’s
10 account and to reinvest an equivalent amount
11 in other investment options which meet the re-
12 quirements of subparagraph (D).

13 “(C) EMPLOYER CONTRIBUTIONS IN-
14 VESTED IN EMPLOYER SECURITIES.—

15 “(i) IN GENERAL.—In the case of the
16 portion of the account attributable to em-
17 ployer contributions (other than elective
18 deferrals to which subparagraph (B) ap-
19 plies) which is invested in employer securi-
20 ties, a plan meets the requirements of this
21 subparagraph if, under the plan—

22 “(I) each applicable individual
23 with a benefit based on 3 years of
24 service may elect to direct the plan to
25 divest any such securities in the indi-

vidual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D), or

“(II) with respect to any employer security allocated to an applicable individual's account during any plan year, such applicable individual may elect to direct the plan to divest such employer security after a date which is not later than 3 years after the end of such plan year and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D).

“(ii) APPLICABLE INDIVIDUAL WITH BENEFIT BASED ON 3 YEARS OF SERVICE.—For purposes of clause (i), an applicable individual has a benefit based on 3 years of service if such individual would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 411(a)) were referred to in subparagraph (E)(ii)(I).

1 “(D) INVESTMENT OPTIONS.—The require-
2 ments of this subparagraph are met if—

3 “(i) the plan offers not less than 3 in-
4 vestment options, other than employer se-
5 curities, to which an applicable individual
6 may direct the proceeds from the divest-
7 ment of employer securities pursuant to
8 this paragraph, each of which is diversified
9 and has materially different risk and re-
10 turn characteristics, and

11 “(ii) the plan permits the applicable
12 individual to choose from any of the invest-
13 ment options made available under the
14 plan to which such proceeds may be so di-
15 rected, subject to such restrictions as may
16 be provided by the plan limiting such
17 choice to periodic, reasonable opportunities
18 occurring no less frequently than on a
19 quarterly basis.

20 “(E) DEFINITIONS AND RULES.—For pur-
21 poses of this paragraph—

22 “(i) APPLICABLE DEFINED CONTRIBU-
23 TION PLAN.—The term ‘applicable defined
24 contribution plan’ means any defined con-
25 tribution plan, except that such term does

1 not include an employee stock ownership
2 plan (within the meaning of section
3 4975(e)(7)) unless there are any contribu-
4 tions to such plan (or earnings thereon)
5 held within such plan that are subject to
6 subsection (k)(3) or (m)(2).

7 “(ii) APPLICABLE INDIVIDUAL.—The
8 term ‘applicable individual’ means—

9 “(I) any participant in the plan,
10 and

11 “(II) any beneficiary of a partici-
12 pant referred to in clause (i) who has
13 an account under the plan with re-
14 spect to which the beneficiary is enti-
15 tled to exercise the rights of the par-
16 ticipant.

17 “(iii) ELECTIVE DEFERRAL.—The
18 term ‘elective deferral’ means an employer
19 contribution described in section
20 402(g)(3)(A) (as in effect on the date of
21 the enactment of this paragraph).

22 “(iv) EMPLOYER SECURITY.—The
23 term ‘employer security’ shall have the
24 meaning given such term by section
25 407(d)(1) of the Employee Retirement In-

1 come Security Act of 1974 (as in effect on
2 the date of the enactment of this para-
3 graph).

4 “(v) EMPLOYEE STOCK OWNERSHIP
5 PLAN.—The term ‘employee stock owner-
6 ship plan’ shall have the same meaning
7 given to such term by section 4975(e)(7)
8 of the Internal Revenue Code of 1986 (as
9 in effect on the date of the enactment of
10 this paragraph).

11 “(vi) ELECTIONS.—Elections under
12 this paragraph may be made not less fre-
13 quently than quarterly.

14 “(F) EXCEPTION WHERE THERE IS NO
15 READILY TRADABLE STOCK.—This paragraph
16 shall not apply if there is no class of stock
17 issued by the employer that is readily tradable
18 on an established securities market (or in such
19 other circumstances as may be determined
20 jointly by the Secretary of the Treasury and the
21 Secretary of Labor in regulations).

22 “(G) TRANSITION RULE.—

23 “(i) IN GENERAL.—In the case of any
24 defined contribution plan which, on the ef-
25 fective date of this subsection, holds em-

1 employer securities of any class that were ac-
 2 quired before such date and on which there
 3 is a restriction on diversification otherwise
 4 precluded by this paragraph, this para-
 5 graph shall apply to such securities of such
 6 class held in any plan year only with re-
 7 spect to the number of such securities
 8 equal to the applicable percentage of the
 9 total number of such securities of such
 10 class held on such date.

11 “(ii) APPLICABLE PERCENTAGE.—For
 12 purposes of clause (i), the applicable per-
 13 centage shall be as follows:

“Plan years for which provisions are effective:	Applicable percentage:
1st plan year	20 percent.
2nd plan year	40 percent.
3rd plan year	60 percent.
4th plan year	80 percent.
5th plan year or thereafter	100 percent.

14 “(iii) ELECTIVE DEFERRALS TREATED
 15 AS SEPARATE PLAN NOT INDIVIDUAL AC-
 16 COUNT PLAN.—For purposes of clause (i),
 17 the applicable percentage shall be 100 per-
 18 cent with respect to—

19 “(I) employee contributions to a
 20 plan under which any portion attrib-
 21 utable to elective deferrals is treated
 22 as a separate plan under section

1 407(b)(2) of the Employee Retirement
2 Income Security Act of 1974 as of the
3 date of the enactment of this para-
4 graph, and

5 “(II) such elective deferrals.

6 “(iv) CONTRIBUTIONS HELD WITHIN
7 AN ESOP.—In the case of contributions
8 (other than elective deferrals and employee
9 contributions) held within an employee
10 stock ownership plan, in the case of the 1st
11 and 2nd plan years referred to in the table
12 in clause (ii), the applicable percentage
13 shall be the greater of the amount deter-
14 mined under clause (ii) or the percentage
15 determined under paragraph (28) (deter-
16 mined as if paragraph (28) applied to a
17 plan described in this paragraph).

18 “(v) COORDINATION WITH PRIOR
19 ELECTIONS UNDER PARAGRAPH (28).—In
20 any case in which a divestiture of invest-
21 ment in employer securities of any class
22 held by an employee stock ownership plan
23 prior to the effective date of this para-
24 graph was undertaken pursuant to an elec-
25 tion under paragraph (28) prior to such

1 date, the applicable percentage (as deter-
 2 mined without regard to this clause) in
 3 connection with such securities shall be re-
 4 duced to the extent necessary to account
 5 for the amount to which such election ap-
 6 plied.

7 “(H) REGULATIONS.—The Secretary shall
 8 prescribe regulations under this paragraph in
 9 consultation with the Secretary of Labor.”.

10 (2) CONFORMING AMENDMENTS.—

11 (A) Section 401(a)(28) of such Code is
 12 amended by adding at the end the following
 13 new subparagraph:

14 “(D) APPLICATION.—This paragraph shall
 15 not apply to a plan to which paragraph (35) ap-
 16 plies.”.

17 (B) Section 409(h)(7) of such Code is
 18 amended by inserting before the period at the
 19 end “or subparagraph (B) or (C) of section
 20 401(a)(35)”.

21 (C) Section 4980(c)(3)(A) of such Code is
 22 amended by striking “if—” and all that follows
 23 and inserting “if the requirements of subpara-
 24 graphs (B), (C), and (D) are met.”.

25 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2) and section 108, the amendments made by
 3 this section shall apply to plan years beginning after
 4 December 31, 2003, and with respect to employer
 5 securities allocated to accounts before, on, or after
 6 the date of the enactment of this Act.

7 (2) EXCEPTION.—The amendments made by
 8 this section shall not apply to employer securities
 9 held by an employee stock ownership plan which are
 10 acquired before January 1, 1987.

11 **SEC. 105. PROHIBITED TRANSACTION EXEMPTION FOR THE**
 12 **PROVISION OF INVESTMENT ADVICE.**

13 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 14 INCOME SECURITY ACT OF 1974.—

15 (1) EXEMPTION FROM PROHIBITED TRANS-
 16 ACTIONS.—Section 408(b) of the Employee Retire-
 17 ment Income Security Act of 1974 (29 U.S.C.
 18 1108(b)) is amended by adding at the end the fol-
 19 lowing new paragraph:

20 “(14)(A) Any transaction described in subpara-
 21 graph (B) in connection with the provision of invest-
 22 ment advice described in section 3(21)(A)(ii), in any
 23 case in which—

1 “(i) the investment of assets of the plan is
2 subject to the direction of plan participants or
3 beneficiaries,

4 “(ii) the advice is provided to the plan or
5 a participant or beneficiary of the plan by a fi-
6 duciary adviser in connection with any sale, ac-
7 quisition, or holding of a security or other prop-
8 erty for purposes of investment of plan assets,
9 and

10 “(iii) the requirements of subsection (g)
11 are met in connection with the provision of the
12 advice.

13 “(B) The transactions described in this sub-
14 paragraph are the following:

15 “(i) the provision of the advice to the plan,
16 participant, or beneficiary;

17 “(ii) the sale, acquisition, or holding of a
18 security or other property (including any lend-
19 ing of money or other extension of credit associ-
20 ated with the sale, acquisition, or holding of a
21 security or other property) pursuant to the ad-
22 vice; and

23 “(iii) the direct or indirect receipt of fees
24 or other compensation by the fiduciary adviser
25 or an affiliate thereof (or any employee, agent,

1 or registered representative of the fiduciary ad-
2 viser or affiliate) in connection with the provi-
3 sion of the advice or in connection with a sale,
4 acquisition, or holding of a security or other
5 property pursuant to the advice.”.

6 (2) REQUIREMENTS.—Section 408 of such Act
7 is amended further by adding at the end the fol-
8 lowing new subsection:

9 “(g) REQUIREMENTS RELATING TO PROVISION OF
10 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

11 “(1) IN GENERAL.—The requirements of this
12 subsection are met in connection with the provision
13 of investment advice referred to in section
14 3(21)(A)(ii), provided to an employee benefit plan or
15 a participant or beneficiary of an employee benefit
16 plan by a fiduciary adviser with respect to the plan
17 in connection with any sale, acquisition, or holding
18 of a security or other property for purposes of in-
19 vestment of amounts held by the plan, if—

20 “(A) in the case of the initial provision of
21 the advice with regard to the security or other
22 property by the fiduciary adviser to the plan,
23 participant, or beneficiary, the fiduciary adviser
24 provides to the recipient of the advice, at a time
25 reasonably contemporaneous with the initial

1 provision of the advice, a written notification
2 (which may consist of notification by means of
3 electronic communication)—

4 “(i) of all fees or other compensation
5 relating to the advice that the fiduciary ad-
6 viser or any affiliate thereof is to receive
7 (including compensation provided by any
8 third party) in connection with the provi-
9 sion of the advice or in connection with the
10 sale, acquisition, or holding of the security
11 or other property,

12 “(ii) of any material affiliation or con-
13 tractual relationship of the fiduciary ad-
14 viser or affiliates thereof in the security or
15 other property,

16 “(iii) of any limitation placed on the
17 scope of the investment advice to be pro-
18 vided by the fiduciary adviser with respect
19 to any such sale, acquisition, or holding of
20 a security or other property,

21 “(iv) of the types of services provided
22 by the fiduciary adviser in connection with
23 the provision of investment advice by the
24 fiduciary adviser,

1 “(v) that the adviser is acting as a fi-
2 duciary of the plan in connection with the
3 provision of the advice, and

4 “(vi) that a recipient of the advice
5 may separately arrange for the provision of
6 advice by another adviser, that could have
7 no material affiliation with and receive no
8 fees or other compensation in connection
9 with the security or other property,

10 “(B) the fiduciary adviser provides appro-
11 priate disclosure, in connection with the sale,
12 acquisition, or holding of the security or other
13 property, in accordance with all applicable secu-
14 rities laws,

15 “(C) the sale, acquisition, or holding oc-
16 curs solely at the direction of the recipient of
17 the advice,

18 “(D) the compensation received by the fi-
19 duciary adviser and affiliates thereof in connec-
20 tion with the sale, acquisition, or holding of the
21 security or other property is reasonable, and

22 “(E) the terms of the sale, acquisition, or
23 holding of the security or other property are at
24 least as favorable to the plan as an arm’s
25 length transaction would be.

1 “(2) STANDARDS FOR PRESENTATION OF IN-
2 FORMATION.—

3 “(A) IN GENERAL.—The notification re-
4 quired to be provided to participants and bene-
5 ficiaries under paragraph (1)(A) shall be writ-
6 ten in a clear and conspicuous manner and in
7 a manner calculated to be understood by the av-
8 erage plan participant and shall be sufficiently
9 accurate and comprehensive to reasonably ap-
10 prise such participants and beneficiaries of the
11 information required to be provided in the noti-
12 fication.

13 “(B) MODEL FORM FOR DISCLOSURE OF
14 FEES AND OTHER COMPENSATION.—The Sec-
15 retary shall issue a model form for the disclo-
16 sure of fees and other compensation required in
17 paragraph (1)(A)(i) which meets the require-
18 ments of subparagraph (A).

19 “(3) EXEMPTION CONDITIONED ON MAKING RE-
20 QUIRED INFORMATION AVAILABLE ANNUALLY, ON
21 REQUEST, AND IN THE EVENT OF MATERIAL
22 CHANGE.—The requirements of paragraph (1)(A)
23 shall be deemed not to have been met in connection
24 with the initial or any subsequent provision of advice
25 described in paragraph (1) to the plan, participant,

1 or beneficiary if, at any time during the provision
2 of advisory services to the plan, participant, or bene-
3 ficiary, the fiduciary adviser fails to maintain the in-
4 formation described in clauses (i) through (iv) of
5 subparagraph (A) in currently accurate form and in
6 the manner described in paragraph (2) or fails—

7 “(A) to provide, without charge, such cur-
8 rently accurate information to the recipient of
9 the advice no less than annually,

10 “(B) to make such currently accurate in-
11 formation available, upon request and without
12 charge, to the recipient of the advice, or

13 “(C) in the event of a material change to
14 the information described in clauses (i) through
15 (iv) of paragraph (1)(A), to provide, without
16 charge, such currently accurate information to
17 the recipient of the advice at a time reasonably
18 contemporaneous to the material change in in-
19 formation.

20 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE
21 OF COMPLIANCE.—A fiduciary adviser referred to in
22 paragraph (1) who has provided advice referred to in
23 such paragraph shall, for a period of not less than
24 6 years after the provision of the advice, maintain
25 any records necessary for determining whether the

1 requirements of the preceding provisions of this sub-
2 section and of subsection (b)(14) have been met. A
3 transaction prohibited under section 406 shall not be
4 considered to have occurred solely because the
5 records are lost or destroyed prior to the end of the
6 6-year period due to circumstances beyond the con-
7 trol of the fiduciary adviser.

8 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
9 TAIN OTHER FIDUCIARIES.—

10 “(A) IN GENERAL.—Subject to subpara-
11 graph (B), a plan sponsor or other person who
12 is a fiduciary (other than a fiduciary adviser)
13 shall not be treated as failing to meet the re-
14 quirements of this part solely by reason of the
15 provision of investment advice referred to in
16 section 3(21)(A)(ii) (or solely by reason of con-
17 tracting for or otherwise arranging for the pro-
18 vision of the advice), if—

19 “(i) the advice is provided by a fidu-
20 ciary adviser pursuant to an arrangement
21 between the plan sponsor or other fidu-
22 ciary and the fiduciary adviser for the pro-
23 vision by the fiduciary adviser of invest-
24 ment advice referred to in such section,

1 “(ii) the terms of the arrangement re-
2 quire compliance by the fiduciary adviser
3 with the requirements of this subsection,
4 and

5 “(iii) the terms of the arrangement
6 include a written acknowledgment by the
7 fiduciary adviser that the fiduciary adviser
8 is a fiduciary of the plan with respect to
9 the provision of the advice.

10 “(B) CONTINUED DUTY OF PRUDENT SE-
11 LECTION OF ADVISER AND PERIODIC REVIEW.—
12 Nothing in subparagraph (A) shall be construed
13 to exempt a plan sponsor or other person who
14 is a fiduciary from any requirement of this part
15 for the prudent selection and periodic review of
16 a fiduciary adviser with whom the plan sponsor
17 or other person enters into an arrangement for
18 the provision of advice referred to in section
19 3(21)(A)(ii). The plan sponsor or other person
20 who is a fiduciary has no duty under this part
21 to monitor the specific investment advice given
22 by the fiduciary adviser to any particular recipi-
23 ent of the advice.

24 “(C) AVAILABILITY OF PLAN ASSETS FOR
25 PAYMENT FOR ADVICE.—Nothing in this part

1 shall be construed to preclude the use of plan
2 assets to pay for reasonable expenses in pro-
3 viding investment advice referred to in section
4 3(21)(A)(ii).

5 “(6) DEFINITIONS.—For purposes of this sub-
6 section and subsection (b)(14)—

7 “(A) FIDUCIARY ADVISER.—The term ‘fi-
8 duciary adviser’ means, with respect to a plan,
9 a person who is a fiduciary of the plan by rea-
10 son of the provision of investment advice by the
11 person to the plan or to a participant or bene-
12 ficiary and who is—

13 “(i) registered as an investment ad-
14 viser under the Investment Advisers Act of
15 1940 (15 U.S.C. 80b–1 et seq.) or under
16 the laws of the State in which the fiduciary
17 maintains its principal office and place of
18 business,

19 “(ii) a bank or similar financial insti-
20 tution referred to in section 408(b)(4) or a
21 savings association (as defined in section
22 3(b)(1) of the Federal Deposit Insurance
23 Act (12 U.S.C. 1813(b)(1))), but only if
24 the advice is provided through a trust de-
25 partment of the bank or similar financial

1 institution or savings association which is
2 subject to periodic examination and review
3 by Federal or State banking authorities,

4 “(iii) an insurance company qualified
5 to do business under the laws of a State,

6 “(iv) a person registered as a broker
7 or dealer under the Securities Exchange
8 Act of 1934 (15 U.S.C. 78a et seq.),

9 “(v) an affiliate of a person described
10 in any of clauses (i) through (iv), or

11 “(vi) an employee, agent, or registered
12 representative of a person described in any
13 of clauses (i) through (v) who satisfies the
14 requirements of applicable insurance,
15 banking, and securities laws relating to the
16 provision of the advice.

17 “(B) AFFILIATE.—The term ‘affiliate’ of
18 another entity means an affiliated person of the
19 entity (as defined in section 2(a)(3) of the In-
20 vestment Company Act of 1940 (15 U.S.C.
21 80a–2(a)(3))).

22 “(C) REGISTERED REPRESENTATIVE.—
23 The term ‘registered representative’ of another
24 entity means a person described in section
25 3(a)(18) of the Securities Exchange Act of

1 1934 (15 U.S.C. 78c(a)(18)) (substituting the
2 entity for the broker or dealer referred to in
3 such section) or a person described in section
4 202(a)(17) of the Investment Advisers Act of
5 1940 (15 U.S.C. 80b-2(a)(17)) (substituting
6 the entity for the investment adviser referred to
7 in such section).”.

8 (b) AMENDMENTS TO THE INTERNAL REVENUE
9 CODE OF 1986.—

10 (1) EXEMPTION FROM PROHIBITED TRANS-
11 ACTIONS.—Subsection (d) of section 4975 of the In-
12 ternal Revenue Code of 1986 (relating to exemptions
13 from tax on prohibited transactions) is amended—

14 (A) in paragraph (14), by striking “or” at
15 the end;

16 (B) in paragraph (15), by striking the pe-
17 riod at the end and inserting “; or”; and

18 (C) by adding at the end the following new
19 paragraph:

20 “(16) any transaction described in subsection
21 (f)(7)(A) in connection with the provision of invest-
22 ment advice described in subsection (e)(3)(B)(i), in
23 any case in which—

1 “(A) the investment of assets of the plan
 2 is subject to the direction of plan participants
 3 or beneficiaries,

4 “(B) the advice is provided to the plan or
 5 a participant or beneficiary of the plan by a fi-
 6 duciary adviser in connection with any sale, ac-
 7 quisition, or holding of a security or other prop-
 8 erty for purposes of investment of plan assets,
 9 and

10 “(C) the requirements of subsection
 11 (f)(7)(B) are met in connection with the provi-
 12 sion of the advice.”.

13 (2) ALLOWED TRANSACTIONS AND REQUIRE-
 14 MENTS.—Subsection (f) of such section 4975 (relat-
 15 ing to other definitions and special rules) is amended
 16 by adding at the end the following new paragraph:

17 “(7) PROVISIONS RELATING TO INVESTMENT
 18 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

19 “(A) TRANSACTIONS ALLOWABLE IN CON-
 20 NECTION WITH INVESTMENT ADVICE PROVIDED
 21 BY FIDUCIARY ADVISERS.—The transactions re-
 22 ferred to in subsection (d)(16), in connection
 23 with the provision of investment advice by a fi-
 24 duciary adviser, are the following:

1 “(i) the provision of the advice to the
2 plan, participant, or beneficiary;

3 “(ii) the sale, acquisition, or holding
4 of a security or other property (including
5 any lending of money or other extension of
6 credit associated with the sale, acquisition,
7 or holding of a security or other property)
8 pursuant to the advice; and

9 “(iii) the direct or indirect receipt of
10 fees or other compensation by the fiduciary
11 adviser or an affiliate thereof (or any em-
12 ployee, agent, or registered representative
13 of the fiduciary adviser or affiliate) in con-
14 nection with the provision of the advice or
15 in connection with a sale, acquisition, or
16 holding of a security or other property pur-
17 suant to the advice.

18 “(B) REQUIREMENTS RELATING TO PROVI-
19 SION OF INVESTMENT ADVICE BY FIDUCIARY
20 ADVISERS.—The requirements of this subpara-
21 graph (referred to in subsection (d)(16)(C)) are
22 met in connection with the provision of invest-
23 ment advice referred to in subsection (e)(3)(B),
24 provided to a plan or a participant or bene-
25 ficiary of a plan by a fiduciary adviser with re-

1 spect to the plan in connection with any sale,
2 acquisition, or holding of a security or other
3 property for purposes of investment of amounts
4 held by the plan, if—

5 “(i) in the case of the initial provision
6 of the advice with regard to the security or
7 other property by the fiduciary adviser to
8 the plan, participant, or beneficiary, the fi-
9 duciary adviser provides to the recipient of
10 the advice, at a time reasonably contem-
11 poraneous with the initial provision of the
12 advice, a written notification (which may
13 consist of notification by means of elec-
14 tronic communication)—

15 “(I) of all fees or other com-
16 pensation relating to the advice that
17 the fiduciary adviser or any affiliate
18 thereof is to receive (including com-
19 pensation provided by any third
20 party) in connection with the provi-
21 sion of the advice or in connection
22 with the sale, acquisition, or holding
23 of the security or other property,

24 “(II) of any material affiliation
25 or contractual relationship of the fidu-

1 ciary adviser or affiliates thereof in
2 the security or other property,

3 “(III) of any limitation placed on
4 the scope of the investment advice to
5 be provided by the fiduciary adviser
6 with respect to any such sale, acquisi-
7 tion, or holding of a security or other
8 property,

9 “(IV) of the types of services
10 provided by the fiduciary adviser in
11 connection with the provision of in-
12 vestment advice by the fiduciary ad-
13 viser,

14 “(V) that the adviser is acting as
15 a fiduciary of the plan in connection
16 with the provision of the advice, and

17 “(VI) that a recipient of the ad-
18 vice may separately arrange for the
19 provision of advice by another adviser,
20 that could have no material affiliation
21 with and receive no fees or other com-
22 pensation in connection with the secu-
23 rity or other property,

24 “(ii) the fiduciary adviser provides ap-
25 propriate disclosure, in connection with the

1 sale, acquisition, or holding of the security
2 or other property, in accordance with all
3 applicable securities laws,

4 “(iii) the sale, acquisition, or holding
5 occurs solely at the direction of the recipi-
6 ent of the advice,

7 “(iv) the compensation received by the
8 fiduciary adviser and affiliates thereof in
9 connection with the sale, acquisition, or
10 holding of the security or other property is
11 reasonable, and

12 “(v) the terms of the sale, acquisition,
13 or holding of the security or other property
14 are at least as favorable to the plan as an
15 arm’s length transaction would be.

16 “(C) STANDARDS FOR PRESENTATION OF
17 INFORMATION.—The notification required to be
18 provided to participants and beneficiaries under
19 subparagraph (B)(i) shall be written in a clear
20 and conspicuous manner and in a manner cal-
21 culated to be understood by the average plan
22 participant and shall be sufficiently accurate
23 and comprehensive to reasonably apprise such
24 participants and beneficiaries of the information
25 required to be provided in the notification.

1 “(D) EXEMPTION CONDITIONED ON MAK-
2 ING REQUIRED INFORMATION AVAILABLE ANNU-
3 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
4 TERIAL CHANGE.—The requirements of sub-
5 paragraph (B)(i) shall be deemed not to have
6 been met in connection with the initial or any
7 subsequent provision of advice described in sub-
8 paragraph (B) to the plan, participant, or bene-
9 ficiary if, at any time during the provision of
10 advisory services to the plan, participant, or
11 beneficiary, the fiduciary adviser fails to main-
12 tain the information described in subclauses (I)
13 through (IV) of subparagraph (B)(i) in cur-
14 rently accurate form and in the manner re-
15 quired by subparagraph (C), or fails—

16 “(i) to provide, without charge, such
17 currently accurate information to the re-
18 cipient of the advice no less than annually,

19 “(ii) to make such currently accurate
20 information available, upon request and
21 without charge, to the recipient of the ad-
22 vice, or

23 “(iii) in the event of a material
24 change to the information described in
25 subclauses (I) through (IV) of subpara-

graph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

“(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

“(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section

1 solely by reason of the provision of investment
2 advice referred to in subsection (e)(3)(B) (or
3 solely by reason of contracting for or otherwise
4 arranging for the provision of the advice), if—

5 “(i) the advice is provided by a fidu-
6 ciary adviser pursuant to an arrangement
7 between the plan sponsor or other fidu-
8 ciary and the fiduciary adviser for the pro-
9 vision by the fiduciary adviser of invest-
10 ment advice referred to in such section,

11 “(ii) the terms of the arrangement re-
12 quire compliance by the fiduciary adviser
13 with the requirements of this paragraph,

14 “(iii) the terms of the arrangement
15 include a written acknowledgment by the
16 fiduciary adviser that the fiduciary adviser
17 is a fiduciary of the plan with respect to
18 the provision of the advice, and

19 “(iv) the requirements of part 4 of
20 subtitle B of title I of the Employee Re-
21 tirement Income Security Act of 1974 are
22 met in connection with the provision of
23 such advice.

24 “(G) DEFINITIONS.—For purposes of this
25 paragraph and subsection (d)(16)—

1 “(i) FIDUCIARY ADVISER.—The term
2 ‘fiduciary adviser’ means, with respect to a
3 plan, a person who is a fiduciary of the
4 plan by reason of the provision of invest-
5 ment advice by the person to the plan or
6 to a participant or beneficiary and who
7 is—

8 “(I) registered as an investment
9 adviser under the Investment Advisers
10 Act of 1940 (15 U.S.C. 80b–1 et seq.)
11 or under the laws of the State in
12 which the fiduciary maintains its prin-
13 cipal office and place of business,

14 “(II) a bank or similar financial
15 institution referred to in subsection
16 (d)(4) or a savings association (as de-
17 fined in section 3(b)(1) of the Federal
18 Deposit Insurance Act (12 U.S.C.
19 1813(b)(1))), but only if the advice is
20 provided through a trust department
21 of the bank or similar financial insti-
22 tution or savings association which is
23 subject to periodic examination and
24 review by Federal or State banking
25 authorities,

1 “(III) an insurance company
2 qualified to do business under the
3 laws of a State,

4 “(IV) a person registered as a
5 broker or dealer under the Securities
6 Exchange Act of 1934 (15 U.S.C. 78a
7 et seq.),

8 “(V) an affiliate of a person de-
9 scribed in any of subclauses (I)
10 through (IV), or

11 “(VI) an employee, agent, or reg-
12 istered representative of a person de-
13 scribed in any of subclauses (I)
14 through (V) who satisfies the require-
15 ments of applicable insurance, bank-
16 ing, and securities laws relating to the
17 provision of the advice.

18 “(ii) AFFILIATE.—The term ‘affiliate’
19 of another entity means an affiliated per-
20 son of the entity (as defined in section
21 2(a)(3) of the Investment Company Act of
22 1940 (15 U.S.C. 80a-2(a)(3))).

23 “(iii) REGISTERED REPRESENTA-
24 TIVE.—The term ‘registered representa-
25 tive’ of another entity means a person de-

scribed in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting the entity for the investment adviser referred to in such section).”.

SEC. 106. STUDY REGARDING IMPACT ON RETIREMENT SAVINGS OF PARTICIPANTS AND BENEFICIARIES BY REQUIRING CONSULTANTS TO ADVISE PLAN FIDUCIARIES OF INDIVIDUAL ACCOUNT PLANS.

(a) STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor shall undertake a study of the costs and benefits to participants and beneficiaries of requiring independent consultants to advise plan fiduciaries in connection with individual account plans. In conducting such study, the Secretary shall consider—

(1) the benefits to plan participants and beneficiaries of engaging independent advisers to provide investment and other advice regarding the assets of the plan to persons who have fiduciary duties with

1 respect to the management or disposition of such as-
2 sets,

3 (2) the extent to which independent advisers
4 are currently retained by plan fiduciaries,

5 (3) the availability of assistance to fiduciaries
6 from appropriate Federal agencies,

7 (4) the availability of qualified independent con-
8 sultants to serve the needs of individual account
9 plan fiduciaries in the United States,

10 (5) the impact of the additional fiduciary duty
11 of an independent advisor on the strict fiduciary ob-
12 ligations of plan fiduciaries,

13 (6) the impact of new requirements (consulting
14 fees, reporting requirements, and new plan duties to
15 prudently identify and contract with qualified inde-
16 pendent consultants) on the availability of individual
17 account plans, and

18 (7) the impact of a new requirement on the
19 plan administration costs per participant for small
20 and mid-size employers and the pension plans they
21 sponsor.

22 (b) REPORT.—Not later than 1 year after the date
23 of the enactment of this Act, the Secretary of Labor shall
24 report the results of the study undertaken pursuant to this
25 section, together with any recommendations for legislative

1 changes, to the Committee on Education and the Work-
2 force of the House of Representatives and the Committee
3 on Health, Education, Labor, and Pensions of the Senate.

4 **SEC. 107. TREATMENT OF QUALIFIED RETIREMENT PLAN-**
5 **NING SERVICES.**

6 (a) IN GENERAL.—Subsection (m) of section 132 of
7 the Internal Revenue Code of 1986 (defining qualified re-
8 tirement services) is amended by adding at the end the
9 following new paragraph:

10 “(4) NO CONSTRUCTIVE RECEIPT.—No amount
11 shall be included in the gross income of any em-
12 ployee solely because the employee may choose be-
13 tween any qualified retirement planning services pro-
14 vided by a qualified investment advisor and com-
15 pensation which would otherwise be includible in the
16 gross income of such employee. The preceding sen-
17 tence shall apply to highly compensated employees
18 only if the choice described in such sentence is avail-
19 able on substantially the same terms to each mem-
20 ber of the group of employees normally provided
21 education and information regarding the employer’s
22 qualified employer plan.”.

23 (b) CONFORMING AMENDMENTS.—

1 (1) Section 403(b)(3)(B) of such Code is
 2 amended by inserting “132(m)(4),” after
 3 “132(f)(4),”.

4 (2) Section 414(s)(2) of such Code is amended
 5 by inserting “132(m)(4),” after “132(f)(4),”.

6 (3) Section 415(c)(3)(D)(ii) of such Code is
 7 amended by inserting “132(m)(4),” after
 8 “132(f)(4),”.

9 (c) EFFECTIVE DATE.—The amendment made by
 10 this section shall apply to taxable years beginning after
 11 December 31, 2003.

12 **SEC. 108. EFFECTIVE DATES AND RELATED RULES.**

13 (a) IN GENERAL.—Except as otherwise provided in
 14 this title or in subsection (b), the amendments made by
 15 this Act shall apply with respect to plan years beginning
 16 on or after the general effective date.

17 (b) GENERAL EFFECTIVE DATE.—For purposes of
 18 this section, the term “general effective date” means the
 19 date which is 1 year after the date of the enactment of
 20 this Act.

21 (c) SPECIAL RULE FOR COLLECTIVELY BARGAINED
 22 PLANS.—In the case of a plan maintained pursuant to 1
 23 or more collective bargaining agreements between em-
 24 ployee representatives and 1 or more employers ratified
 25 on or before the date of the enactment of this Act, sub-

1 section (a) shall be applied to benefits pursuant to, and
2 individuals covered by, any such agreement by substituting
3 for “the general effective date” the date of the commence-
4 ment of the first plan year beginning on or after the ear-
5 lier of—

6 (1) the later of—

7 (A) the date which is 1 year after the gen-
8 eral effective date, or

9 (B) the date on which the last of such col-
10 lective bargaining agreements terminates (de-
11 termined without regard to any extension there-
12 of after the date of the enactment of this Act),
13 or

14 (2) the date which is 2 years after the general
15 effective date.

16 (d) AMENDMENTS RELATING TO INVESTMENT AD-
17 VICE.—The amendments made by section 105 shall apply
18 with respect to advice referred to in section 3(21)(A)(ii)
19 of the Employee Retirement Income Security Act of 1974
20 or section 4975(c)(3)(B) of the Internal Revenue Code of
21 1986 provided on or after January 1, 2005.

1 **TITLE II—OTHER PROVISIONS**
2 **RELATING TO PENSIONS**

3 **SEC. 201. AMENDMENTS TO RETIREMENT PROTECTION ACT**
4 **OF 1994.**

5 (a) TRANSITION RULE MADE PERMANENT.—Para-
6 graph (1) of section 769(c) of the Retirement Protection
7 Act of 1994 is amended—

8 (1) by striking “transition” each place it ap-
9 pears in the heading and the text, and

10 (2) by striking “for any plan year beginning
11 after 1996 and before 2010”.

12 (b) SPECIAL RULES.—Paragraph (2) of section
13 769(c) of the Retirement Protection Act of 1994 is amend-
14 ed to read as follows:

15 “(2) SPECIAL RULES.—The rules described in
16 this paragraph are as follows:

17 “(A) For purposes of section 412(l)(9)(A)
18 of the Internal Revenue Code of 1986 and sec-
19 tion 302(d)(9)(A) of the Employee Retirement
20 Income Security Act of 1974, the funded cur-
21 rent liability percentage for any plan year shall
22 be treated as not less than 90 percent.

23 “(B) For purposes of section 412(m) of
24 the Internal Revenue Code of 1986 and section
25 302(e) of the Employee Retirement Income Se-

1 curity Act of 1974, the funded current liability
2 percentage for any plan year shall be treated as
3 not less than 100 percent.

4 “(C) For purposes of determining un-
5 funded vested benefits under section
6 4006(a)(3)(E)(iii) of the Employee Retirement
7 Income Security Act of 1974, the mortality
8 table shall be the mortality table used by the
9 plan.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to plan years beginning after De-
12 cember 31, 2002.

13 **SEC. 202. REPORTING SIMPLIFICATION.**

14 (a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
15 OWNERS AND THEIR SPOUSES.—

16 (1) IN GENERAL.—The Secretary of the Treas-
17 ury and the Secretary of Labor shall modify the re-
18 quirements for filing annual returns with respect to
19 one-participant retirement plans to ensure that such
20 plans with assets of \$250,000 or less as of the close
21 of the plan year need not file a return for that year.

22 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-
23 FINED.—For purposes of this subsection, the term
24 “one-participant retirement plan” means a retire-

1 ment plan with respect to which the following re-
2 quirements are met:

3 (A) on the first day of the plan year—

4 (i) the plan covered only one indi-
5 vidual (or the individual and the individ-
6 ual's spouse) and the individual owned 100
7 percent of the plan sponsor (whether or
8 not incorporated), or

9 (ii) the plan covered only one or more
10 partners (or partners and their spouses) in
11 the plan sponsor;

12 (B) the plan meets the minimum coverage
13 requirements of 410(b) of the Internal Revenue
14 Code of 1986 without being combined with any
15 other plan of the business that covers the em-
16 ployees of the business;

17 (C) the plan does not provide benefits to
18 anyone except the individual (and the individ-
19 ual's spouse) or the partners (and their
20 spouses);

21 (D) the plan does not cover a business that
22 is a member of an affiliated service group, a
23 controlled group of corporations, or a group of
24 businesses under common control; and

1 (E) the plan does not cover a business that
 2 leases employees.

3 (3) OTHER DEFINITIONS.—Terms used in para-
 4 graph (2) which are also used in section 414 of the
 5 Internal Revenue Code of 1986 shall have the re-
 6 spective meanings given such terms by such section.

7 (4) EFFECTIVE DATE.—The provisions of this
 8 subsection shall apply to plan years beginning on or
 9 after January 1, 2003.

10 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
 11 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case
 12 of plan years beginning after December 31, 2004, the Sec-
 13 retary of the Treasury and the Secretary of Labor shall
 14 provide for the filing of a simplified annual return for any
 15 retirement plan which covers less than 25 employees on
 16 the first day of a plan year and which meets the require-
 17 ments described in subparagraphs (B), (D), and (E) of
 18 subsection (a)(2).

19 **SEC. 203. IMPROVEMENT OF EMPLOYEE PLANS COMPLI-**
 20 **ANCE RESOLUTION SYSTEM.**

21 The Secretary of the Treasury shall continue to up-
 22 date and improve the Employee Plans Compliance Resolu-
 23 tion System (or any successor program) giving special at-
 24 tention to—

1 (1) increasing the awareness and knowledge of
2 small employers concerning the availability and use
3 of the program;

4 (2) taking into account special concerns and
5 circumstances that small employers face with respect
6 to compliance and correction of compliance failures;

7 (3) extending the duration of the self-correction
8 period under the Self-Correction Program for signifi-
9 cant compliance failures;

10 (4) expanding the availability to correct insig-
11 nificant compliance failures under the Self-Correc-
12 tion Program during audit; and

13 (5) assuring that any tax, penalty, or sanction
14 that is imposed by reason of a compliance failure is
15 not excessive and bears a reasonable relationship to
16 the nature, extent, and severity of the failure.

17 The Secretary of the Treasury shall have full authority
18 to effectuate the foregoing with respect to the Employee
19 Plans Compliance Resolution System (or any successor
20 program) and any other employee plans correction poli-
21 cies, including the authority to waive income, excise, or
22 other taxes to ensure that any tax, penalty, or sanction
23 is not excessive and bears a reasonable relationship to the
24 nature, extent, and severity of the failure.

1 **SEC. 204. FLEXIBILITY IN NONDISCRIMINATION, COV-**
2 **ERAGE, AND LINE OF BUSINESS RULES.**

3 (a) NONDISCRIMINATION.—

4 (1) IN GENERAL.—The Secretary of the Treas-
5 ury shall, by regulation, provide that a plan shall be
6 deemed to satisfy the requirements of section
7 401(a)(4) of the Internal Revenue Code of 1986 if
8 such plan satisfies the facts and circumstances test
9 under section 401(a)(4) of such Code, as in effect
10 before January 1, 1994, but only if—

11 (A) the plan satisfies conditions prescribed
12 by the Secretary to appropriately limit the
13 availability of such test; and

14 (B) the plan is submitted to the Secretary
15 for a determination of whether it satisfies such
16 test.

17 Subparagraph (B) shall only apply to the extent pro-
18 vided by the Secretary.

19 (2) EFFECTIVE DATES.—

20 (A) REGULATIONS.—The regulation re-
21 quired by paragraph (1) shall apply to years be-
22 ginning after December 31, 2004.

23 (B) CONDITIONS OF AVAILABILITY.—Any
24 condition of availability prescribed by the Sec-
25 retary under paragraph (1)(A) shall not apply
26 before the first year beginning not less than

1 120 days after the date on which such condition
2 is prescribed.

3 (b) COVERAGE TEST.—

4 (1) IN GENERAL.—Section 410(b)(1) of the In-
5 ternal Revenue Code of 1986 (relating to minimum
6 coverage requirements) is amended by adding at the
7 end the following:

8 “(D) In the case that the plan fails to
9 meet the requirements of subparagraphs (A),
10 (B) and (C), the plan—

11 “(i) satisfies subparagraph (B), as in
12 effect immediately before the enactment of
13 the Tax Reform Act of 1986,

14 “(ii) is submitted to the Secretary for
15 a determination of whether it satisfies the
16 requirement described in clause (i), and

17 “(iii) satisfies conditions prescribed by
18 the Secretary by regulation that appro-
19 priately limit the availability of this sub-
20 paragraph.

21 Clause (ii) shall apply only to the extent pro-
22 vided by the Secretary.”.

23 (2) EFFECTIVE DATES.—

1 (A) IN GENERAL.—The amendment made
2 by paragraph (1) shall apply to years beginning
3 after December 31, 2004.

4 (B) CONDITIONS OF AVAILABILITY.—Any
5 condition of availability prescribed by the Sec-
6 retary under regulations prescribed by the Sec-
7 retary under section 410(b)(1)(D) of the Inter-
8 nal Revenue Code of 1986 shall not apply be-
9 fore the first year beginning not less than 120
10 days after the date on which such condition is
11 prescribed.

12 (c) LINE OF BUSINESS RULES.—The Secretary of
13 the Treasury shall, on or before December 31, 2004, mod-
14 ify the existing regulations issued under section 414(r) of
15 the Internal Revenue Code of 1986 in order to expand
16 (to the extent that the Secretary determines appropriate)
17 the ability of a pension plan to demonstrate compliance
18 with the line of business requirements based upon the
19 facts and circumstances surrounding the design and oper-
20 ation of the plan, even though the plan is unable to satisfy
21 the mechanical tests currently used to determine compli-
22 ance.

1 **SEC. 205. EXTENSION TO ALL GOVERNMENTAL PLANS OF**
2 **MORATORIUM ON APPLICATION OF CERTAIN**
3 **NONDISCRIMINATION RULES APPLICABLE TO**
4 **STATE AND LOCAL PLANS.**

5 (a) IN GENERAL.—

6 (1) Subparagraph (G) of section 401(a)(5) of
7 the Internal Revenue Code of 1986 and subpara-
8 graph (H) of section 401(a)(26) of such Code are
9 each amended by striking “section 414(d))” and all
10 that follows and inserting “section 414(d)).”.

11 (2) Subparagraph (G) of section 401(k)(3) of
12 the Internal Revenue Code of 1986 and paragraph
13 (2) of section 1505(d) of the Taxpayer Relief Act of
14 1997 are each amended by striking “maintained by
15 a State or local government or political subdivision
16 thereof (or agency or instrumentality thereof)”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) The heading for subparagraph (G) of sec-
19 tion 401(a)(5) of such Code is amended to read as
20 follows: “GOVERNMENTAL PLANS.—”.

21 (2) The heading for subparagraph (H) of sec-
22 tion 401(a)(26) of such Code is amended to read as
23 follows: “EXCEPTION FOR GOVERNMENTAL
24 PLANS.—”.

1 (3) Subparagraph (G) of section 401(k)(3) of
2 such Code is amended by inserting “GOVERN-
3 MENTAL PLANS.—” after “(G)”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to years beginning after December
6 31, 2003.

7 **SEC. 206. NOTICE AND CONSENT PERIOD REGARDING DIS-**
8 **TRIBUTIONS.**

9 (a) EXPANSION OF PERIOD.—

10 (1) AMENDMENT OF INTERNAL REVENUE
11 CODE.—

12 (A) IN GENERAL.—Subparagraph (A) of
13 section 417(a)(6) of the Internal Revenue Code
14 of 1986 is amended by striking “90-day” and
15 inserting “180-day”.

16 (B) MODIFICATION OF REGULATIONS.—
17 The Secretary of the Treasury shall modify the
18 regulations under sections 402(f), 411(a)(11),
19 and 417 of the Internal Revenue Code of 1986
20 to substitute “180 days” for “90 days” each
21 place it appears in Treasury Regulations sec-
22 tions 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–
23 1(b).

24 (2) AMENDMENT OF ERISA.—

1 (A) IN GENERAL.—Section 205(c)(7)(A) of
 2 the Employee Retirement Income Security Act
 3 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended
 4 by striking “90-day” and inserting “180-day”.

5 (B) MODIFICATION OF REGULATIONS.—
 6 The Secretary of the Treasury shall modify the
 7 regulations under part 2 of subtitle B of title
 8 I of the Employee Retirement Income Security
 9 Act of 1974 to the extent that they relate to
 10 sections 203(e) and 205 of such Act to sub-
 11 stitute “180 days” for “90 days” each place it
 12 appears.

13 (3) EFFECTIVE DATE.—The amendments made
 14 by paragraphs (1)(A) and (2)(A) and the modifica-
 15 tions required by paragraphs (1)(B) and (2)(B)
 16 shall apply to years beginning after December 31,
 17 2003.

18 (b) CONSENT REGULATION INAPPLICABLE TO CER-
 19 TAIN DISTRIBUTIONS.—

20 (1) IN GENERAL.—The Secretary of the Treas-
 21 ury shall modify the regulations under section
 22 411(a)(11) of the Internal Revenue Code of 1986
 23 and under section 205 of the Employee Retirement
 24 Income Security Act of 1974 to provide that the de-
 25 scription of a participant’s right, if any, to defer re-

1 receipt of a distribution shall also describe the con-
2 sequences of failing to defer such receipt.

3 (2) EFFECTIVE DATE.—

4 (A) IN GENERAL.—The modifications re-
5 quired by paragraph (1) shall apply to years be-
6 ginning after December 31, 2003.

7 (B) REASONABLE NOTICE.—In the case of
8 any description of such consequences made be-
9 fore the date that is 90 days after the date on
10 which the Secretary of the Treasury issues a
11 safe harbor description under paragraph (1), a
12 plan shall not be treated as failing to satisfy the
13 requirements of section 411(a)(11) of such
14 Code or section 205 of such Act by reason of
15 the failure to provide the information required
16 by the modifications made under paragraph (1)
17 if the Administrator of such plan makes a rea-
18 sonable attempt to comply with such require-
19 ments.

20 **SEC. 207. ANNUAL REPORT DISSEMINATION.**

21 (a) REPORT AVAILABLE THROUGH ELECTRONIC
22 MEANS.—Section 104(b)(3) of the Employee Retirement
23 Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is
24 amended by adding at the end the following new sentence:
25 “The requirement to furnish information under the pre-

1 vious sentence with respect to an employee pension benefit
2 plan shall be satisfied if the administrator makes such in-
3 formation reasonably available through electronic means
4 or other new technology.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to reports for years beginning after
7 December 31, 2003.

8 **SEC. 208. TECHNICAL CORRECTIONS TO SAVER ACT.**

9 Section 517 of the Employee Retirement Income Se-
10 curity Act of 1974 (29 U.S.C. 1147) is amended—

11 (1) in subsection (a), by striking “2001 and
12 2005 on or after September 1 of each year involved”
13 and inserting “2006 and 2010”;

14 (2) in subsection (e)(2)—

15 (A) by striking “Committee on Labor and
16 Human Resources” in subparagraph (D) and
17 inserting “Committee on Health, Education,
18 Labor, and Pensions”;

19 (B) by striking subparagraph (F) and in-
20 serting the following:

21 “(F) the Chairman and Ranking Member
22 of the Subcommittee on Labor, Health and
23 Human Services, and Education of the Com-
24 mittee on Appropriations of the House of Rep-
25 resentatives and the Chairman and Ranking

1 Member of the Subcommittee on Labor, Health
2 and Human Services, and Education of the
3 Committee on Appropriations of the Senate;”;

4 (C) by redesignating subparagraph (G) as
5 subparagraph (J); and

6 (D) by inserting after subparagraph (F)
7 the following new subparagraphs:

8 “(G) the Chairman and Ranking Member
9 of the Committee on Finance of the Senate;

10 “(H) the Chairman and Ranking Member
11 of the Committee on Ways and Means of the
12 House of Representatives;

13 “(I) the Chairman and Ranking Member
14 of the Subcommittee on Employer-Employee
15 Relations of the Committee on Education and
16 the Workforce of the House of Representatives;
17 and”;

18 (3) in subsection (e)(3)(B), by striking “Janu-
19 ary 31, 1998” and inserting “2 months before the
20 convening of each summit;”;

21 (4) in subsection (f)(1)(C), by inserting “, no
22 later than 60 days prior to the date of the com-
23 mencement of the National Summit,” after “com-
24 ment”;

25 (5) in subsection (i)—

1 (A) by striking “for fiscal years beginning
2 on or after October 1, 1997,”; and

3 (B) by adding at the end the following new
4 paragraph:

5 “(3) RECEPTION AND REPRESENTATION AU-
6 THORITY.—The Secretary is hereby granted recep-
7 tion and representation authority limited specifically
8 to the events at the National Summit. The Secretary
9 shall use any private contributions accepted in con-
10 nection with the National Summit prior to using
11 funds appropriated for purposes of the National
12 Summit pursuant to this paragraph.”; and

13 (6) in subsection (k)—

14 (A) by striking “shall enter into a contract
15 on a sole-source basis” and inserting “may
16 enter into a contract on a sole-source basis”;
17 and

18 (B) by striking “in fiscal year 1998”.

19 **SEC. 209. MISSING PARTICIPANTS.**

20 (a) IN GENERAL.—Section 4050 of the Employee Re-
21 tirement Income Security Act of 1974 (29 U.S.C. 1350)
22 is amended by redesignating subsection (c) as subsection
23 (e) and by inserting after subsection (b) the following new
24 subsections:

1 “(c) MULTIEMPLOYER PLANS.—The corporation
 2 shall prescribe rules similar to the rules in subsection (a)
 3 for multiemployer plans covered by this title that termi-
 4 nate under section 4041A.

5 “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

6 “(1) TRANSFER TO CORPORATION.—The plan
 7 administrator of a plan described in paragraph (4)
 8 may elect to transfer a missing participant’s benefits
 9 to the corporation upon termination of the plan.

10 “(2) INFORMATION TO THE CORPORATION.—To
 11 the extent provided in regulations, the plan adminis-
 12 trator of a plan described in paragraph (4) shall,
 13 upon termination of the plan, provide the corpora-
 14 tion information with respect to benefits of a miss-
 15 ing participant if the plan transfers such benefits—

16 “(A) to the corporation, or

17 “(B) to an entity other than the corpora-
 18 tion or a plan described in paragraph (4)(B)(ii).

19 “(3) PAYMENT BY THE CORPORATION.—If ben-
 20 efits of a missing participant were transferred to the
 21 corporation under paragraph (1), the corporation
 22 shall, upon location of the participant or beneficiary,
 23 pay to the participant or beneficiary the amount
 24 transferred (or the appropriate survivor benefit) ei-
 25 ther—

1 “(A) in a single sum (plus interest), or

2 “(B) in such other form as is specified in
3 regulations of the corporation.

4 “(4) PLANS DESCRIBED.—A plan is described
5 in this paragraph if—

6 “(A) the plan is a pension plan (within the
7 meaning of section 3(2))—

8 “(i) to which the provisions of this
9 section do not apply (without regard to
10 this subsection), and

11 “(ii) which is not a plan described in
12 paragraphs (2) through (11) of section
13 4021(b), and

14 “(B) at the time the assets are to be dis-
15 tributed upon termination, the plan—

16 “(i) has missing participants, and

17 “(ii) has not provided for the transfer
18 of assets to pay the benefits of all missing
19 participants to another pension plan (with-
20 in the meaning of section 3(2)).

21 “(5) CERTAIN PROVISIONS NOT TO APPLY.—
22 Subsections (a)(1) and (a)(3) shall not apply to a
23 plan described in paragraph (4).”.

24 (b) CONFORMING AMENDMENTS.—Section 206(f) of
25 such Act (29 U.S.C. 1056(f)) is amended—

1 (1) by striking “title IV” and inserting “section
2 4050”; and

3 (2) by striking “the plan shall provide that,”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to distributions made after final
6 regulations implementing subsections (c) and (d) of sec-
7 tion 4050 of the Employee Retirement Income Security
8 Act of 1974 (as added by subsection (a)), respectively, are
9 prescribed.

10 **SEC. 210. REDUCED PBGC PREMIUM FOR NEW PLANS OF**
11 **SMALL EMPLOYERS.**

12 (a) IN GENERAL.—Subparagraph (A) of section
13 4006(a)(3) of the Employee Retirement Income Security
14 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

15 (1) in clause (i), by inserting “other than a new
16 single-employer plan (as defined in subparagraph
17 (F)) maintained by a small employer (as so de-
18 fined),” after “single-employer plan,”,

19 (2) in clause (iii), by striking the period at the
20 end and inserting “, and”, and

21 (3) by adding at the end the following new
22 clause:

23 “(iv) in the case of a new single-employer plan
24 (as defined in subparagraph (F)) maintained by a
25 small employer (as so defined) for the plan year, \$5

1 for each individual who is a participant in such plan
2 during the plan year.”.

3 (b) DEFINITION OF NEW SINGLE-EMPLOYER
4 PLAN.—Section 4006(a)(3) of the Employee Retirement
5 Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is
6 amended by adding at the end the following new subpara-
7 graph:

8 “(F)(i) For purposes of this paragraph, a single-em-
9 ployer plan maintained by a contributing sponsor shall be
10 treated as a new single-employer plan for each of its first
11 5 plan years if, during the 36-month period ending on the
12 date of the adoption of such plan, the sponsor or any
13 member of such sponsor’s controlled group (or any prede-
14 cessor of either) did not establish or maintain a plan to
15 which this title applies with respect to which benefits were
16 accrued for substantially the same employees as are in the
17 new single-employer plan.

18 “(ii)(I) For purposes of this paragraph, the term
19 ‘small employer’ means an employer which on the first day
20 of any plan year has, in aggregation with all members of
21 the controlled group of such employer, 100 or fewer em-
22 ployees.

23 “(II) In the case of a plan maintained by two or more
24 contributing sponsors that are not part of the same con-
25 trolled group, the employees of all contributing sponsors

1 and controlled groups of such sponsors shall be aggregated
 2 for purposes of determining whether any contributing
 3 sponsor is a small employer.”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to plans first effective after Decem-
 6 ber 31, 2003.

7 **SEC. 211. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**
 8 **NEW AND SMALL PLANS.**

9 (a) NEW PLANS.—Subparagraph (E) of section
 10 4006(a)(3) of the Employee Retirement Income Security
 11 Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by
 12 adding at the end the following new clause:

13 “(v) In the case of a new defined benefit plan, the
 14 amount determined under clause (ii) for any plan year
 15 shall be an amount equal to the product of the amount
 16 determined under clause (ii) and the applicable percent-
 17 age. For purposes of this clause, the term ‘applicable per-
 18 centage’ means—

19 “(I) 0 percent, for the first plan year.

20 “(II) 20 percent, for the second plan year.

21 “(III) 40 percent, for the third plan year.

22 “(IV) 60 percent, for the fourth plan year.

23 “(V) 80 percent, for the fifth plan year.

24 For purposes of this clause, a defined benefit plan (as de-
 25 fined in section 3(35)) maintained by a contributing spon-

1 sor shall be treated as a new defined benefit plan for each
 2 of its first 5 plan years if, during the 36-month period
 3 ending on the date of the adoption of the plan, the sponsor
 4 and each member of any controlled group including the
 5 sponsor (or any predecessor of either) did not establish
 6 or maintain a plan to which this title applies with respect
 7 to which benefits were accrued for substantially the same
 8 employees as are in the new plan.”.

9 (b) SMALL PLANS.—Paragraph (3) of section
 10 4006(a) of the Employee Retirement Income Security Act
 11 of 1974 (29 U.S.C. 1306(a)), as amended by section
 12 210(b), is amended—

13 (1) by striking “The” in subparagraph (E)(i)
 14 and inserting “Except as provided in subparagraph
 15 (G), the”, and

16 (2) by inserting after subparagraph (F) the fol-
 17 lowing new subparagraph:

18 “(G)(i) In the case of an employer who has 25 or
 19 fewer employees on the first day of the plan year, the addi-
 20 tional premium determined under subparagraph (E) for
 21 each participant shall not exceed \$5 multiplied by the
 22 number of participants in the plan as of the close of the
 23 preceding plan year.

24 “(ii) For purposes of clause (i), whether an employer
 25 has 25 or fewer employees on the first day of the plan

1 year is determined by taking into consideration all of the
 2 employees of all members of the contributing sponsor's
 3 controlled group. In the case of a plan maintained by two
 4 or more contributing sponsors, the employees of all con-
 5 tributing sponsors and their controlled groups shall be ag-
 6 gregated for purposes of determining whether the 25-or-
 7 fewer-employees limitation has been satisfied.”.

8 (c) EFFECTIVE DATES.—

9 (1) SUBSECTION (a).—The amendments made
 10 by subsection (a) shall apply to plans first effective
 11 after December 31, 2003.

12 (2) SUBSECTION (b).—The amendments made
 13 by subsection (b) shall apply to plan years beginning
 14 after December 31, 2003.

15 **SEC. 212. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
 16 **PREMIUM OVERPAYMENT REFUNDS.**

17 (a) IN GENERAL.—Section 4007(b) of the Employ-
 18 ment Retirement Income Security Act of 1974 (29 U.S.C.
 19 1307(b)) is amended—

20 (1) by striking “(b)” and inserting “(b)(1)”,
 21 and

22 (2) by inserting at the end the following new
 23 paragraph:

24 “(2) The corporation is authorized to pay, subject to
 25 regulations prescribed by the corporation, interest on the

1 amount of any overpayment of premium refunded to a des-
 2 ignated payor. Interest under this paragraph shall be cal-
 3 culated at the same rate and in the same manner as inter-
 4 est is calculated for underpayments under paragraph
 5 (1).”.

6 (b) EFFECTIVE DATE.—The amendment made by
 7 subsection (a) shall apply to interest accruing for periods
 8 beginning not earlier than the date of the enactment of
 9 this Act.

10 **SEC. 213. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**
 11 **PLANS.**

12 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—
 13 Section 4022(b)(5) of the Employee Retirement Income
 14 Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended
 15 to read as follows:

16 “(5)(A) For purposes of this paragraph, the term
 17 ‘majority owner’ means an individual who, at any time
 18 during the 60-month period ending on the date the deter-
 19 mination is being made—

20 “(i) owns the entire interest in an unincor-
 21 porated trade or business,

22 “(ii) in the case of a partnership, is a partner
 23 who owns, directly or indirectly, 50 percent or more
 24 of either the capital interest or the profits interest
 25 in such partnership, or

1 “(iii) in the case of a corporation, owns, directly
 2 or indirectly, 50 percent or more in value of either
 3 the voting stock of that corporation or all the stock
 4 of that corporation.

5 For purposes of clause (iii), the constructive ownership
 6 rules of section 1563(e) of the Internal Revenue Code of
 7 1986 shall apply (determined without regard to section
 8 1563(e)(3)(C)).

9 “(B) In the case of a participant who is a majority
 10 owner, the amount of benefits guaranteed under this sec-
 11 tion shall equal the product of—

12 “(i) a fraction (not to exceed 1) the numerator
 13 of which is the number of years from the later of the
 14 effective date or the adoption date of the plan to the
 15 termination date, and the denominator of which is
 16 10, and

17 “(ii) the amount of benefits that would be guar-
 18 anteed under this section if the participant were not
 19 a majority owner.”.

20 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

21 (1) Section 4044(a)(4)(B) of the Employee Re-
 22 tirement Income Security Act of 1974 (29 U.S.C.
 23 1344(a)(4)(B)) is amended by striking “section
 24 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

1 (2) Section 4044(b) of such Act (29 U.S.C.
2 1344(b)) is amended—

3 (A) by striking “(5)” in paragraph (2) and
4 inserting “(4), (5),” and

5 (B) by redesignating paragraphs (3)
6 through (6) as paragraphs (4) through (7), re-
7 spectively, and by inserting after paragraph (2)
8 the following new paragraph:

9 “(3) If assets available for allocation under
10 paragraph (4) of subsection (a) are insufficient to
11 satisfy in full the benefits of all individuals who are
12 described in that paragraph, the assets shall be allo-
13 cated first to benefits described in subparagraph (A)
14 of that paragraph. Any remaining assets shall then
15 be allocated to benefits described in subparagraph
16 (B) of that paragraph. If assets allocated to such
17 subparagraph (B) are insufficient to satisfy in full
18 the benefits described in that subparagraph, the as-
19 sets shall be allocated pro rata among individuals on
20 the basis of the present value (as of the termination
21 date) of their respective benefits described in that
22 subparagraph.”.

23 (c) CONFORMING AMENDMENTS.—

1 (1) Section 4021 of the Employee Retirement
2 Income Security Act of 1974 (29 U.S.C. 1321) is
3 amended—

4 (A) in subsection (b)(9), by striking “as
5 defined in section 4022(b)(6)”, and

6 (B) by adding at the end the following new
7 subsection:

8 “(d) For purposes of subsection (b)(9), the term ‘sub-
9 stantial owner’ means an individual who, at any time dur-
10 ing the 60-month period ending on the date the determina-
11 tion is being made—

12 “(1) owns the entire interest in an unincor-
13 porated trade or business,

14 “(2) in the case of a partnership, is a partner
15 who owns, directly or indirectly, more than 10 per-
16 cent of either the capital interest or the profits inter-
17 est in such partnership, or

18 “(3) in the case of a corporation, owns, directly
19 or indirectly, more than 10 percent in value of either
20 the voting stock of that corporation or all the stock
21 of that corporation.

22 For purposes of paragraph (3), the constructive ownership
23 rules of section 1563(e) of the Internal Revenue Code of
24 1986 shall apply (determined without regard to section
25 1563(e)(3)(C)).”.

1 (2) Section 4043(c)(7) of such Act (29 U.S.C.
2 1343(c)(7)) is amended by striking “section
3 4022(b)(6)” and inserting “section 4021(d)”.

4 (d) EFFECTIVE DATES.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the amendments made by this section
7 shall apply to plan terminations—

8 (A) under section 4041(c) of the Employee
9 Retirement Income Security Act of 1974 (29
10 U.S.C. 1341(c)) with respect to which notices
11 of intent to terminate are provided under sec-
12 tion 4041(a)(2) of such Act (29 U.S.C.
13 1341(a)(2)) after December 31, 2003, and

14 (B) under section 4042 of such Act (29
15 U.S.C. 1342) with respect to which proceedings
16 are instituted by the corporation after such
17 date.

18 (2) CONFORMING AMENDMENTS.—The amend-
19 ments made by subsection (c) shall take effect on
20 January 1, 2004.

21 **SEC. 214. BENEFIT SUSPENSION NOTICE.**

22 (a) MODIFICATION OF REGULATION.—The Secretary
23 of Labor shall modify the regulation under subparagraph
24 (B) of section 203(a)(3) of the Employee Retirement In-
25 come Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to

1 provide that the notification required by such regulation
 2 in connection with any suspension of benefits described in
 3 such subparagraph—

4 (1) in the case of an employee who returns to
 5 service described in section 203(a)(3)(B)(i) or (ii) of
 6 such Act after commencement of payment of bene-
 7 fits under the plan, shall be made during the first
 8 calendar month or the first 4 or 5-week payroll pe-
 9 riod ending in a calendar month in which the plan
 10 withholds payments, and

11 (2) in the case of any employee who is not de-
 12 scribed in paragraph (1)—

13 (A) may be included in the summary plan
 14 description for the plan furnished in accordance
 15 with section 104(b) of such Act (29 U.S.C.
 16 1024(b)), rather than in a separate notice, and

17 (B) need not include a copy of the relevant
 18 plan provisions.

19 (b) EFFECTIVE DATE.—The modification made
 20 under this section shall apply to plan years beginning after
 21 December 31, 2003.

22 **SEC. 215. STUDIES.**

23 (a) MODEL SMALL EMPLOYER GROUP PLANS
 24 STUDY.—As soon as practicable after the date of the en-
 25 actment of this Act, the Secretary of Labor, in consulta-

1 tion with the Secretary of the Treasury, shall conduct a
2 study to determine—

3 (1) the most appropriate form or forms of—

4 (A) employee pension benefit plans which
5 would—

6 (i) be simple in form and easily main-
7 tained by multiple small employers, and

8 (ii) provide for ready portability of
9 benefits for all participants and bene-
10 ficiaries,

11 (B) alternative arrangements providing
12 comparable benefits which may be established
13 by employee or employer associations, and

14 (C) alternative arrangements providing
15 comparable benefits to which employees may
16 contribute in a manner independent of employer
17 sponsorship, and

18 (2) appropriate methods and strategies for
19 making pension plan coverage described in para-
20 graph (1) more widely available to American work-
21 ers.

22 (b) MATTERS TO BE CONSIDERED.—In conducting
23 the study under subsection (a), the Secretary of Labor
24 shall consider the adequacy and availability of existing em-
25 ployee pension benefit plans and the extent to which exist-

1 ing models may be modified to be more accessible to both
2 employees and employers.

3 (c) REPORT.—Not later than 18 months after the
4 date of the enactment of this Act, the Secretary of Labor
5 shall report the results of the study under subsection (a),
6 together with the Secretary's recommendations, to the
7 Committee on Education and the Workforce and the Com-
8 mittee on Ways and Means of the House of Representa-
9 tives and the Committee on Health, Education, Labor,
10 and Pensions and the Committee on Finance of the Sen-
11 ate. Such recommendations shall include one or more
12 model plans described in subsection (a)(1)(A) and model
13 alternative arrangements described in subsections
14 (a)(1)(B) and (a)(1)(C) which may serve as the basis for
15 appropriate administrative or legislative action.

16 (d) STUDY ON EFFECT OF LEGISLATION.—Not later
17 than 5 years after the date of the enactment of this Act,
18 the Secretary of Labor shall submit to the Committee on
19 Education and the Workforce of the House of Representa-
20 tives and the Committee on Health, Education, Labor,
21 and Pensions of the Senate a report on the effect of the
22 provisions of this Act and title VI of the Economic Growth
23 and Tax Relief Reconciliation Act of 2001 on pension plan
24 coverage, including any change in—

- 1 (1) the extent of pension plan coverage for low
- 2 and middle-income workers,
- 3 (2) the levels of pension plan benefits generally,
- 4 (3) the quality of pension plan coverage gen-
- 5 erally,
- 6 (4) workers' access to and participation in pen-
- 7 sion plans, and
- 8 (5) retirement security.

9 **SEC. 216. INTEREST RATE RANGE FOR ADDITIONAL FUND-**
 10 **ING REQUIREMENTS.**

11 (a) IN GENERAL.—Subclause (III) of section
 12 412(l)(7)(C)(i) of the Internal Revenue Code of 1986 is
 13 amended—

14 (1) by striking “2002 or 2003” in the text and
 15 inserting “2001, 2002, or 2003”, and

16 (2) by striking “2002 AND 2003” in the heading
 17 and inserting “2001, 2002, AND 2003”.

18 (b) SPECIAL RULE.—Subclause (III) of section
 19 302(d)(7)(C)(i) of the Employee Retirement Income Secu-
 20 rity Act of 1974 (29 U.S.C. 1082(d)(7)(C)(i)) is amend-
 21 ed—

22 (1) by striking “2002 or 2003” in the text and
 23 inserting “2001, 2002, or 2003”, and

24 (2) by striking “2002 AND 2003” in the heading
 25 and inserting “2001, 2002, AND 2003”.

1 (c) PBGC.—Subclause (IV) of section
 2 4006(a)(3)(E)(iii) of such Act (29 U.S.C.
 3 1306(a)(3)(E)(iii)) is amended to read as follows—

4 “(IV) In the case of plan years beginning after
 5 December 31, 2001, and before January 1, 2004,
 6 subclause (II) shall be applied by substituting ‘100
 7 percent’ for ‘85 percent’ and by substituting ‘115
 8 percent’ for ‘100 percent’. Subclause (III) shall be
 9 applied for such years without regard to the pre-
 10 ceding sentence. Any reference to this clause or this
 11 subparagraph by any other sections or subsections
 12 (other than sections 4005, 4010, 4011 and 4043)
 13 shall be treated as a reference to this clause or this
 14 subparagraph without regard to this subclause.”.

15 (d) EFFECTIVE DATE.—

16 (1) GENERAL RULE.—Subject to paragraph (2),
 17 the amendments made by this section shall take ef-
 18 fect as if included in the amendments made by sec-
 19 tion 405 of the Job Creation and Worker Assistance
 20 Act of 2002.

21 (2) ELECTION.—The plan sponsor or plan ad-
 22 ministrator of a plan may elect whether to have the
 23 amendments made by subsections (a) and (b) apply.
 24 Such election shall be made in such manner and at
 25 such time as the Secretary of the Treasury or his

1 delegate may prescribe and, once made, may not be
 2 revoked. An election to apply such amendments shall
 3 not be treated as a prohibited change in actuarial
 4 assumptions for purposes of reports required to be
 5 filed with the Secretary of Labor, the Secretary of
 6 Treasury, or the Pension Benefit Guaranty Corpora-
 7 tion.

8 **TITLE III—GENERAL** 9 **PROVISIONS**

10 **SEC. 301. PROVISIONS RELATING TO PLAN AMENDMENTS.**

11 (a) IN GENERAL.—If this section applies to any plan
 12 or contract amendment—

13 (1) such plan or contract shall be treated as
 14 being operated in accordance with the terms of the
 15 plan during the period described in subsection
 16 (b)(2)(A), and

17 (2) except as provided by the Secretary of the
 18 Treasury, such plan shall not fail to meet the re-
 19 quirements of section 411(d)(6) of the Internal Rev-
 20 enue Code of 1986 and section 204(g) of the Em-
 21 ployee Retirement Income Security Act of 1974 by
 22 reason of such amendment.

23 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

1 (1) IN GENERAL.—This section shall apply to
2 any amendment to any plan or annuity contract
3 which is made—

4 (A) pursuant to any amendment made by
5 section 101, 102, 103, or 104, by title II, or by
6 title VI of the Economic Growth and Tax Relief
7 Reconciliation Act of 2001, or pursuant to any
8 regulation issued by the Secretary of the Treas-
9 ury or the Secretary of Labor under any such
10 section, title II, or such title VI, and

11 (B) on or before the last day of the first
12 plan year beginning on or after January 1,
13 2006.

14 In the case of a governmental plan (as defined in
15 section 414(d) of the Internal Revenue Code of
16 1986), this paragraph shall be applied by sub-
17 stituting “2008” for “2006”.

18 (2) CONDITIONS.—This section shall not apply
19 to any amendment unless—

20 (A) during the period—

21 (i) beginning on the date the legisla-
22 tive or regulatory amendment described in
23 paragraph (1)(A) takes effect (or in the
24 case of a plan or contract amendment not
25 required by such legislative or regulatory

1 amendment, the effective date specified by
2 the plan), and

3 (ii) ending on the date described in
4 paragraph (1)(B) (or, if earlier, the date
5 the plan or contract amendment is adopt-
6 ed),

7 the plan or contract is operated as if such plan
8 or contract amendment were in effect; and

9 (B) such plan or contract amendment ap-
10 plies retroactively for such period.

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